

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
HPI Acquisition Co., LLC d/b/a Charter Communications)	CSR 6075-E ¹
)	
Tahlequah Cable Television Co., Inc. d/b/a WEHCO Video, Inc.)	CSR 6111-E
)	
Bright House Networks, LLC)	CSR 6126-E & 6182-E
)	
MCC Iowa, LLC)	CSR 6148-E, 6159-E & 6212-E
)	
Hometown Online, Inc.)	CSR 6184-E
)	
MCC Illinois, LLC)	CSR 6211-E, 6224-E & 6239-E
)	
Eleven Unopposed Petitions for Determination of Effective Competition in Thirty-Seven Local Franchise Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: June 29, 2004

Released: June 30, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers eleven unopposed petitions which cable operators (the "Cable Operators") have filed with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that such operators are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act") and the Commission's implementing rules and are therefore exempt from cable rate regulation in the communities listed in Attachment A (the "Communities"). No opposition to the petitions was filed. Finding that the Cable Operators are subject to effective competition in the listed Communities, we grant the petitions.

¹ Charter filed for competing provider effective competition in seven North Carolina communities. Commission staff twice requested that Charter clarify the record with regard to certain inconsistencies relating to the number of households and Charter subscribers in those communities. Charter has failed to do so in a timely manner. Accordingly, we dismiss without prejudice to refiling at a later time Charter's petition with regard to the communities of Banner Elk (NC0122), Beech Mountain (NC0450), Blowing Rock (NC0511), Elk Park (NC0123), New Land (NC0255), Seven Devils (NC0636), and Watauga County, North Carolina (NC0144, NC0820, NC0637, & NC0821). Any such refiling should address the inconsistencies raised by the Commission. Charter's low penetration effective competition petition with regard to Halifax County, North Carolina does not suffer from the same deficiency and will be resolved herein.

II. DISCUSSION

A. Competing Provider Effective Competition

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,² as that term is defined by Section 76.905 of the Commission's rules.³ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁴ Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.⁵

3. In ten of the petitions, the Cable Operators claim the presence of effective competition stems from the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. and EchoStar Communications Corporation. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁶ The Cable Operators have provided evidence of the advertising of DBS service in the news media serving the Communities for which a competing provider determination is requested.⁷ Moreover, the two DBS providers' subscriber growth reached approximately 20.4 million as of June 30, 2003, comprising approximately 20 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and EchoStar the fourth largest MVPD provider.⁸ With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.⁹ We find that the Cable Operators have demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the Communities. The Cable Operators have also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of the DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of

²47 C.F.R. § 76.906.

³47 C.F.R. § 76.905.

⁴See 47 C.F.R. §§ 76.906 & 907.

⁵47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁶See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁷See *e.g.*, Bright House Petition at 4-6 and Exhibit A; WEHCO Petition at 4 and Exhibit 1.

⁸ *Tenth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 04-5 at ¶¶ 65-67 (rel. Jan. 28, 2004).

⁹See 47 C.F.R. § 76.905(g). *See also* Bright House Petition at 7-8 and Exhibit B; WEHCO Petition at 4-5 and Exhibits 2 & 3.

DirecTV and EchoStar.¹⁰ Therefore, the first prong of the competing provider test is satisfied for each of the Communities.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. The Cable Operators sought to determine the competing provider penetration in the Communities by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis.¹¹ The Cable Operators assert that they are the largest MVPD in the Communities because their subscribership exceeds the aggregate DBS subscribership for those franchise areas.¹² Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that the Cable Operator's have demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that the Cable Operators have submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

B. The Low Penetration Effective Competition Test

5. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system."¹³ The two Cable Operators listed on Attachment A provided information showing that less than 30 percent of the households within their franchise areas subscribe to their cable services. Based on this record, we conclude that the Cable Operators have demonstrated the existence of low penetration effective competition under our rules.

6. Based on the foregoing, we conclude that the eleven Cable Operators listed on Attachment A have submitted sufficient evidence to demonstrate that their cable systems are subject to effective competition.

¹⁰See e.g., Bright House Petition at 8; WEHCO Petition at 3-5.

¹¹See e.g., Bright House Petition at 9-10 and Exhibits E & F; WEHCO Petition at 5-6 and Exhibits 4 & 6. WEHCO provided a report that provided zip code plus four information. The remaining petitions reported on a five digit zip code basis.

¹²See e.g., Bright House Petition at 8-9 and Exhibit C; WEHCO Petition at 5 and Exhibit 4; *see also*, August 15, 2003 Letter Supplement from Cole, Raywid & Braverman, L.L.P. to Kenneth Lewis, Federal Communications Commission.

¹³47 U.S.C § 543(l)(1)(A).

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions filed by the Cable Operators listed on Attachment A for a determination of effective competition in the Communities listed thereon **ARE GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing the Cable Operators **ARE REVOKED**.

9. **IT IS FURTHER ORDERED** that the competing provider effective competition petition filed by HPI Acquisition Co., LLC d/b/a Charter Communications in CSR 6075-E **IS DISMISSED** without prejudice.

10. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

¹⁴47 C.F.R. § 0.283.

Attachment A

Cable Operators Subject to Competing Provider Effective Competition**Tahlequah Cable Television Co., Inc. d/b/a WEHCO Video, Inc.: CSR 6111-E**

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Tahlequah	OK0199	28.20%	5,703	1,608

Bright House Networks, LLC: CSR 6126-E & 6182-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Bellevue	FL0622	22.75	1600	364
Bunnell	FL0637	43.59	845	368
Center Hill	FL0700	34.60	282	98
Clermont	FL0266	24.19	3995	966
Coleman	FL0624	18.22	257	47
Groveland	FL0269	39.50	845	334
Kissimmee	FL0223	15.83	17121	2710
Lake Helen	FL0582	18.00	1124	202
Minneola	FL0270	24.19	1929	467
St. Cloud	FL0137	22.25	7716	1716
Webster	FL0701	40.59	294	119
Arvin	CA0296	19.0	3010	571
Avenal	CA0127	19.7	1928	379
Bakersfield	CA0143	41.43	83441	35569 ¹⁵
Delano	CA0144	19.2	8409	1616
Maricopa	CA0942	26.2	404	106
McFarland	CA0145	19.5	1990	387
Shafter	CA0146	16.9	3293	556
Tehachapi	CA0298	33.1	2533	839
Wasco	CA0147	16.3	3971	649

¹⁵ 9,739 DBS subscribers + 24,830 Cox Cable subscribers.

MCC Iowa, LLC: CSR 6148-E, 6159-E & 6212-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Adel	IA0510	26.88	1369	368
Manchester	IA0172	23.4	2167	507
Tama	IA0156	22.54	1065	240

MCC Illinois, LLC: CSR 6211-E, 6224-E & 6239-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
W. Frankfort	IL0123	17.38	3596	625
Herrin	IL0122	20.06	4831	969
Marion	IL0128	18.28	6902	1262
Marseilles	IL0052	22.50	1867	420

Cable Operators Subject to Low Penetration Effective Competition**HPI Acquisition Co., LLC d/b/a Charter Communications: CSR-6075-E**

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Halifax County	12,228	3,187	26.1%

Hometown Online, Inc.: CSR 6184-E

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Warwick	6,062	0	0%